

EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2116

BRIAN ALAN CHORMICLE
678 Morning Star Drive
Sonora CA 95370

A C C U S A T I O N

Respiratory Care Practitioner License no. 19563

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 22, 1997, the Respiratory Care Board issued Respiratory Care Practitioner License number 19563 to Brian Alan Chormicle (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2008, unless renewed.

///

///

///

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

7. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

"(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with

1 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
2 (commencing with section 4015) of Chapter 9.

3 “(b) Used any controlled substance as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7
5 (commencing with section 4210) of Chapter 9 of this code.”

6 8. Section 3752 of the Code states:

7 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
8 made to a charge of any offense which substantially relates to the qualifications,
9 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
10 the meaning of this article. The board shall order the license suspended or revoked, or
11 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
12 conviction has been affirmed on appeal or when an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent order under Section
14 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
15 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
16 accusation, information, or indictment.”

17 9. California Code of Regulations, title 16, section 1399.370, states:

18 “For the purposes of denial, suspension, or revocation of a license, a crime or act
19 shall be considered to be substantially related to the qualifications, functions or duties of
20 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
21 perform the functions authorized by his or her license or in a manner inconsistent with the
22 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
23 those involving the following:

24 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
25 abetting the violation of or conspiring to violate any provision or term of the Act.”

26 “(c) Conviction of a crime involving driving under the influence or reckless
27 driving while under the influence.”

28 ///

1 COST RECOVERY

2 10. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the board,
4 the board or the administrative law judge may direct any practitioner or applicant found to have
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
6 investigation and prosecution of the case."

7 11. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other
10 administrative, filing, and service fees."

11 12. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation may
13 include, among other things, a requirement that the licensee-probationer pay the monetary costs
14 associated with monitoring the probation. "

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction)

17 13. Respondent is subject to disciplinary action under sections 3750(d),
18 3750(g), 3752 and CCR 1399.370(c) in that he was convicted of violating Vehicle Code section
19 23103.5 (acceptance of nolo contendere plea to violation of section 23103 in place of charge for
20 violation of section 23152). The circumstances are as follows:

21 14. On or about September 21, 2005, at approximately 0325 hours, California
22 Highway Patrol Officer J. Peregoy was notified of a possible driving under the influence driver in
23 a black BMW. Officer Peregoy observed the subject vehicle traveling at speeds between 25 and
24 55 miles per hour. The driver was swerving between the lanes, and was very slow to react to the
25 police car flashing lights and siren.

26 15. Officer Peregoy approached the vehicle on the passenger side and
27 observed the driver alone in the car, rocking back and forth in his seat. Officer Peregoy asked for
28 his license, registration and insurance. The driver, identified as respondent by a California

1 driver's license, stated in a very slow and slurred voice that he had just come off work as a
2 respiratory therapist. Officer Peregoy asked respondent to step out of the vehicle. Respondent
3 used the side of his car for balance, and as he walked around the car, he walked with a slight
4 limp. He denied drinking alcohol. He told the officer that he had taken medication because he
5 had been in a traffic collision "about a year ago" and fractured his ankle. He also stated he had a
6 fused vertebrae in his back. He would not answer the date the collision occurred or the date the
7 fused vertebrae had occurred. He stated that he had taken Soma, Vicoden, Flexirol and
8 Darvocet, and had prescriptions for all the medications. Respondent stated that he had just used
9 the medications when he got off work, and that he had taken more than was prescribed.

10 16. Officer Peregoy asked respondent to perform field sobriety tests (FSTs).
11 Respondent stated that his right ankle had been broken and repaired with surgery, and he had
12 very limited movement. He also stated he had back problems but had not had surgery for his
13 back. Respondent was unable to perform the FSTs.

14 17. Officer Peregoy observed a clear plastic bag on the rear seat of
15 respondent's vehicle, which contained three Naprosyn tablets (300 mg), one Vicodin tablet (800
16 mg), one Soma tablet (350 mg), nine Soma/Naprosyn caplets (unknown mg), 52 Ultram caplets
17 (unknown mg). He also had 67 Darvocet-N tablets (100 mg) in a prescription bottle. The label
18 on the bottle was for M.B.¹ Based on respondent's driving, poor performance on the FSTs,
19 admission to using more medication than prescribed, and objective symptoms, Officer Peregoy
20 arrested respondent for violating Vehicle Code section 23152(a), driving under the influence of
21 alcohol and/or drugs.

22 18. Respondent was informed of Vehicle Code section 23612 (implied
23 consent), and he chose a blood test. Respondent's test results were positive for benzodiazepines
24 and opiates.

25 19. On or about October 18, 2005, a criminal complaint titled *People of the*
26 *State of California vs. Brian Alan Chormicle* was filed in Stanislaus County Superior Court, case
27

28 1. Initials are used to protect confidentiality. Full names will be disclosed in discovery.

1 no. CHP 18427AR. Count 1 charged respondent with violating Vehicle Code section 23152(a),
2 driving under the influence of a drug. Count 2 charged respondent with violating Business &
3 Professions code section 4060, possession of a controlled substance in that he had a controlled
4 substance in his possession without a valid prescription.

5 20. On or about August 30, 2006, in Superior Court Stanislaus County case
6 no. 1099220, respondent was convicted on his plea of nolo contendere to a misdemeanor
7 violation of Vehicle Code section 23103.5 (acceptance of nolo contendere plea to violation of
8 section 23103 in place of charge for violation of section 23152). Count 2 was dismissed. The
9 respondent was placed on thirty six months informal probation, ordered to take all medication as
10 directed, and not to be impaired while driving. He was ordered to complete a Level I short term
11 drinking drivers program.

12 21. Therefore, respondent's license is subject to discipline based on his
13 conviction of violating Vehicle Code section 23103.5, which is substantially related to the
14 practice of respiratory care.

15 SECOND CAUSE FOR DISCIPLINE

16 (Possession of a controlled substance)

17 22. Paragraphs 14 through 20 above are incorporated herein.

18 23. Respondent was in possession of Darvocet, a controlled substance, that
19 was prescribed to M.B.

20 24. Respondent is subject to disciplinary action under section 3750.5(a) in that
21 he was in possession of a controlled substance without a valid prescription.

22 THIRD CAUSE FOR DISCIPLINE

23 (Use of a controlled substance)

24 25. Paragraphs 14 through 23 above are incorporated herein.

25 26. On September 21, 2005, respondent tested positive for hydrocodone,
26 carisoprodol, meprobamate, diazepam, nordiazepam and norpropoxyphene. He did not have
27 valid prescriptions for these controlled substances.

28 27. Respondent is subject to disciplinary action under section 3750.5(b) in that

1 he used controlled substances without a valid prescription.

2 PRAYER

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

5 1. Revoking or suspending Respiratory Care Practitioner License Number
6 19563, issued to Brian Alan Chormicle.

7 2. Ordering Brian Alan Chormicle to pay the Respiratory Care Board the
8 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
9 probation monitoring;

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: December 19, 2007

12
13
14 Original signed by Liane Zimmerman for:
15 STEPHANIE NUNEZ
16 Executive Officer
17 Respiratory Care Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant
21
22
23
24
25
26
27
28